

## **SETTLEMENT AGREEMENT AND RELEASE**

Edward Dale Parker, hereinafter "Parker", enters this contract and agreement in release and settlement of any and all claims against the North Carolina Department of Health and Humans Services (hereinafter "DHHS"), Environment and Natural Resources, (hereinafter "DHHS") , and within DHHS, the Division of Public Health ( hereinafter "DPH"), and the Appalachian District Health Department (hereinafter ADHD").

The parties to this Agreement agree and stipulate that:

1. Parker is the owner of two lots, Lots 157 and 158, Mountain View Estates Subdivision in Ashe County, North Carolina.
2. DPH, as a division of DHHS, is responsible for the enforcement of rules and statutes regulating On-Site Wastewater Systems, and environmental health specialists in ADHD act as agents of DHHS for enforcement of such rules and statutes.
3. An improvement permit to install a Large Diameter Pipe (LDP) onsite wastewater system on the Lots was issued to Parker by ADHD on March 18, 2005.
4. In June 28, 2011, Parker's septic tank installer was attempting to install the septic tank and ran into rock. He called ADHD and Jason Pierce, with ADHD, came to the site and evaluated the site. He also called his superior at ADHD, Andrew Blethen, to evaluate the site. Both Pierce and Blethen determined the site was unsuitable for the LDP system that had been permitted. They did, however, find that the site was suitable for a drip irrigation wastewater system. After further evaluation, including evaluation by Parker's private licensed soil scientist, and discussion with the regional soil scientist for DPH, ADHD issued a letter of intent to suspend the original permit for the LDP system.
5. Parker contested this decision and a hearing was held in the Office of

Administrative Hearings. The Administrative Law Judge ruled that the agency acted correctly in suspending the improvement permit and construction authorization for Lots 157 and 158. The Final Agency Decisionmaker in DHHS adopted the ALJ's Decision.

6. Parker received the new construction authorization to install the drip wastewater irrigation system on Lots 157 and 158 on September 13, 2013 and the drip system installation was completed and operation permit issued on September 27, 2013.

7. Parker intended to proceed to the Industrial Commission to file a tort claim against DHHS based on the actions of its agents in issuing the original permit for the property. The parties agreed to settlement of this matter under the terms and conditions below in lieu of Parker filing a claim against DHHS.

Based upon the foregoing stipulations, and in consideration of the compromise of any claims arising from the matters set out herein and the payment of the sums set out herein, the receipt of which Parker hereby acknowledges, Parker and DHHS voluntarily and knowingly executes this Contract and Settlement Agreement and Release with the express intention of effecting the extinguishment of any and all rights, claims, demands or obligations which either has against the other on account of, connected with, growing out of or in any way arising out of the matters referred to herein.

NOW, THEREFORE, in consideration of the agreements contained herein, the parties contract and agree to the following terms:

1. The total amount of forty-four thousand dollars (\$44,000.00) will be paid by DHHS on behalf of DHHS and ADHD to Parker in complete settlement of the matter set out herein.

2. Parker has installed a new drip on-site wastewater system and agrees to properly

maintain the system in accordance with state on-site wastewater system laws and rules.

3. The parties agree that the costs of installing the system, including but not limited to, components of the system, pumps, drainlines, pumplines, electrical equipment, landscaping, and all labor or services required for the installation of such items, are included in the lump sum payment and all such costs are solely the responsibility of Parker.

4. The parties agree that Parker or his heirs, successors and assigns will perform all required operation and maintenance of the system for so long as the system is in operation and all such costs are solely the responsibility of Parker or his heirs successors and assigns.

5. Parker, or any agent or contractor acting on his behalf, shall not make any changes to the site or the system subsequent to issuance of permits or authorizations for the site by ADHD without the specific written approval of ADHD in accordance with applicable laws and rules. Nor shall he use the site in any manner that violates the wastewater laws, rules or conditions of wastewater permits or authorizations.

6. For the sole and only consideration of a total amount of forty-four thousand dollars (\$44,000.00), the undersigned Parker, for himself and for his heirs, executors, administrators, successors and assigns, does RELEASE AND FOREVER DISCHARGE both DHHS and ADHD, and their present or former officers, employees, agents and servants, both individually and otherwise, of and from any and all, known or unknown, claims, demands, damages, actions, causes of action of whatever kind or nature, for the evaluation, issuance, denial, suspension, or revocation of any wastewater permits or authorizations, specifically including but not limited to any repairs or authorizations for repairs of systems, or for any evaluation, preparation, excavation, or installation on Parker' site in any way connected to, either directly or indirectly, the approval or operation of a wastewater system on the site or for any

alleged breach of duty, neglect, violation of constitutional rights, financial losses, lost wages or income, interest or mortgage rates, recoupment of expenses, payments to third parties, emotional distress, pain and suffering, and any and all other damages on account of or arising from the matters set out herein. DHHS, their successors and assigns, though not having asserted any claims arising from the matters set out herein, do also release and forever discharge Parker from any and all, known or unknown, claims, demands, damages, actions, causes of action of whatever kind or nature which DHHS, its successors and assigns could have asserted based upon facts or matters arising/occurring prior to the date of this agreement and release.

7. Parker and DHHS acknowledge and agree that the release and discharge set forth herein is a general release of all claims on their behalf. Parker understands that this release is made as a compromise to avoid expense and to terminate all controversy and/or claims for damages or injuries, subrogation and third-party or otherwise, of whatever nature, known or unknown, including future developments thereof, in any way growing out of or connected to the matters set out herein. Parker expressly waives and assumes the risk of any and all claims for damages that exist as of this date on his behalf, including any claims that he does not know or suspect to exist, whether through ignorance, oversight, error, negligence or otherwise, and that, if known, would materially affect his decision to enter into this contract and settlement agreement and release. Parker further agrees that he has accepted payment of the sums specified herein as a complete compromise of all matters involving any issues of law and/or fact as they relate to claims on his behalf. Parker assumes the risk that the facts and/or law may be other than he believes.

8. Parker understands and agrees that the sums paid by DHHS are solely by way of compromise of any claims and are not to be construed as an admission of wrongdoing or liability. Parker understands and specifically agrees that this release and discharge is a

complete bar to all claims or suits, for damages or injuries of any nature whatsoever resulting, or to result, from the matters set out herein. 9. Nothing in this Agreement shall relieve any party of its responsibility to comply with applicable rules and statutes for wastewater systems.

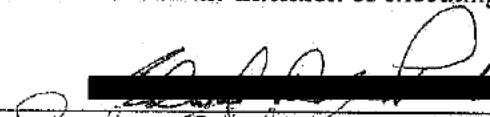
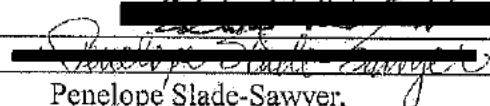
10. If either party fails to abide by the terms of this agreement, the other party shall enjoy any applicable remedy at law to enforce the terms of this agreement.

11. The parties understand and agree that they have read and reviewed this instrument and that this instrument contains the entire agreement between the parties hereto, that the terms of this contract and settlement agreement and release are contractual and are not mere recitals and the sum paid under this agreement is all that DHHS and its present and former officers, agents, employees, servants and staff, officially or individually, or ADHD and its present and former officers, agents, employees, servants and staff, officially or individually, will ever be required to pay and all that Parker will ever receive from DHHS or ADHD as to any claim of any nature whatsoever, known or unknown, arising out of the matters set out herein.

12. The parties understand and agree that the terms of this contract and settlement agreement and release are set out herein in their entirety and that no part of this contract and settlement agreement and release may be changed in any way unless the change is made in writing and signed by all parties.

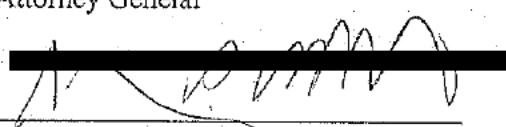
13. This agreement becomes binding on the parties hereto only when signed by all named parties.

In witness whereof, the parties hereto have executed this contract and settlement agreement and release on this the 30th day of April, 2014 and have set forth their signatures and seals with the intention of executing this document under seal.

  
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 Edward Dale Parker  
Penelope Slade-Sawyer,  
Director, Division of Public Health

On behalf of DHHS

ROY COOPER III  
Attorney General

  
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John P. Barkley  
Assistant Attorney General